

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAVID HESTER, an individual,)	CASE NO.: 11-cv-8163 (KBF)
)	
Plaintiff,)	Hon. Katherine B. Forrest
)	
vs.)	Magistrate Judge Debra C. Freeman
)	
TREMAINE NEVERSON, an individual,)	ANSWER OF PLAINTIFF DAVID
TREY SONGZ PRODUCTIONS, L.L.C.,)	HESTER TO COUNTERCLAIM OF
)	TREY SONGZ PRODUCTIONS,
Defendants.)	L.L.C.
)	
)	
)	

Answering the Counterclaim of Trey Songz Productions, LLC (“Songz LLC”), Plaintiff David Hester (“Hester”) alleges:

THE PARTIES

1. Hester is without sufficient information to enable him to respond to the allegations of Paragraph 1 and therefore denies them.
2. Hester admits the allegations of Paragraph 2.

JURISDICTION

3. Hester admits the allegations of Paragraphs 3 and 4.

GENERAL ALLEGATIONS

4. Hester is without sufficient information to enable him to respond to the allegations of Paragraphs 5, 6, 7, 8 and 9 and therefore denies them.
5. Hester admits the allegations of the first sentence in Paragraph 10. Hester is without sufficient information to enable him to respond to the allegations of the second and third sentences of Paragraph 10 and therefore denies them.

6. Hester is without sufficient information to enable him to respond to the allegations of Paragraph 11.

7. Answering Paragraph 12, Hester denies that the “YUUUP! mark” belongs to Songz LLC. Hester is without sufficient information to enable him to respond to the other allegations of this Paragraph and therefore denies them.

8. Answering Paragraph 13, Hester denies that the “YUUUP! mark” belongs to Songz LLC. Hester is without sufficient information to enable him to respond to the other allegations of this Paragraph and therefore denies them.

9. Hester is without sufficient information to enable him to respond to the allegations of Paragraph 14 and therefore denies them.

10. Hester admits that products to which the word “YUUUP!” is affixed are offered for sale on the Internet website with a URL or <http://www.TreySongz.com>. Hester is without sufficient information to enable him to respond to the other allegations of Paragraph 15 and therefore denies them.

11. Hester denies the allegations of Paragraph 16.

12. Hester denies that Songz LLC has any rights in the YUUUP! mark. Hester is without sufficient information to enable him to respond to the remaining allegations of Paragraph 17 and therefore denies them.

13. Hester denies the allegations in Paragraphs 18 and 19.

HESTER’S GOODS

14. Hester admits the allegations of Paragraph 20.

15. Hester admits that he filed an intent-to-use application for his mark YUUUP! on May 4, 2011 with the United States Patent and Trademark Office. Hester is without sufficient information to enable him to respond to the other allegations in Paragraph 21 and therefore denies them.

16. Hester admits that he uses his mark YUUUP! in connection with the sale of apparel, which is sold through the Internet on the site www.yuuup.com and elsewhere. Hester is without sufficient information to enable him to respond to the other allegations in Paragraph 22 and therefore denies them.

17. Hester denies the allegations in Paragraph 23.

18. Hester admits the allegations of Paragraph 24, except that Hester denies any implication in the Paragraph that the YUUUP! mark belongs to Songz LLC.

COUNTERCLAIM COUNT I
Cancellation Of Hester's Registration Based On Songz LLC's Prior Use
(15 U.S.C. § 1052(d))

19. Answering Paragraph 25, Hester realleges and incorporates by references his responses to Paragraphs 1-24, inclusive.

20. Hester admits that Songz LLC has affixed the word YUUUP! to clothing, denies that the word is Songz' trademark and denies the other allegations in Paragraph 26.

21. Hester denies the allegations of Paragraph 27 of the Complaint except that Hester admits that he filed his intent to use application for the mark with the United States Patent & Trademark Office on May 4, 2011.

22. Hester denies the allegations of Paragraphs 28, 29 and 30 of the Complaint.

23. Except as specifically admitted herein, all allegations of the Songz LLC counterclaim are denied.

AFFIRMATIVE DEFENSES

24. As a further and separate answer and defense, Hester alleges on information and belief that Songz LLC's claims are barred by the doctrine of estoppel. Hester's use of the YUUUP! mark has been in open, notorious and continuous use by Hester for more than one year prior to the filing of the counterclaim, to Songz LLC's actual or constructive knowledge, with no prior attempt on Songz, LLC's part to obtain a judicial determination of its and Hester's

respective rights with respect to Hester's use of his mark. Hester has relied to his detriment upon Songz LLC's acquiescence and delay and has continued to use it and to invest substantial sums to promote and advertise his mark. Songz LLC is therefore estopped to allege that any act of Hester now infringes on any rights of Songz, LLC (which rights otherwise are expressly denied) or to demand the cancellation of the mark.

25. As a further and separate answer and defense, Hester alleges on information and belief that Songz LLC's claims are barred because Songz LLC has no standing to bring a cancellation action against Hester's registered YUUUP! mark.

WHEREFORE, Hester prays:

1. That Songz LLC take nothing by its counterclaim;
2. For costs of suit, including reasonable attorneys' fees as may be allowed by case or statutory law or by agreement of the parties; and
3. For such other relief as the Court may deem just and appropriate.

Dated: April 26, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2012, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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